Present: Ennis J.

1912.

GOVERNMENT AGENT, NORTH-CENTRAL PROVINCE, *v.* APPUHAMY.

858—P. C. Anuradhapura, 27,191.

Summary trial—Long postponements irregular—Failure of justice—Criminal Procedure Code, ss. 188, 289, 425.

It is a denial of justice to postpone a summary case for an unreasonable length of time, for reasonable speed is essential in a summary trial.

The answer to the question whether an adjournment is unreasonably long would depend upon the circumstances of each case.

THE accused, who was charged with having cleared land at the disposal of the Crown without permit, claimed the land on a copper sannas. The Magistrate made the following order on June 18, 1906:—" Send sannas and case both to the Government Agent. Accused to appear when noticed." No further steps were taken until January 10, 1911. After a series of adjournments the case was finally heard on November 11, 1912, and the Magistrate held that the sannas was a forgery, and convicted the accused.

The accused appealed.

H. A. Jayewardene (with him *Talaivasingham*), for the accused, appellant.—The Magistrate had no power to make an order postponing the case indefinitely or for an unreasonable length of time.

[1] *(1900) 2 Q. B. at page 219.*

1912.

Goverment Agent, North-Central Province, v. Appuhamy

No steps were taken in this case after June 18, 1906, till January 10, 1911. This being a summary case the Magistrate should not have adjourned the case, except for a reasonable time. Counsel referred to sections 188 and 289 of the Criminal Procedure Code.

The case was one for the Civil Court. The evidence shows that the accused acted *bona fide* throughout. This is practically an action by the Crown to establish title to a disputed land. The accused should have been sued in the Civil Court, and not prosecuted in the Criminal Court.

Obeyesekere, C.C., for the respondent.—The Court had jurisdiction to entertain the charge (Ordinance No. 10 of 1885, section 4). The offence has been clearly proved. [Ennis J.—Are not these long adjournments irregular?] The adjournments were made in the interests of the accused himself. Moreover, he did not complain of the delay at any time. The section gives the Magistrate the power to postpone a case for such time as he may consider reasonable. [Ennis J.—No Court will say that a postponement for five years is reasonable.] If your Lordship is satisfied that a case has been made out against the accused, section 425 would cure the irregularity. [Counsel took time to submit authority. Later, he cited 417—P. C. Anuradhapura, 27,957.[1]]

Cur. adv. vult.

December 20, 1912. ENNIS J.—

In this case the accused was charged in March, 1906, in the Police Court of Anuradhapura, at the instance of the Government Agent, with having cleared in December, 1905, certain land at the disposal of the Crown contrary to the provisions of Ordinance No. 10 of 1885.

The case came on at various times between May 28, 1906, and June 18, 1906, when the accused produced a copper sannas from the possession of his uncle. The sannas had not been registered. An order was then made: "Send sannas and case both to the Government Agent. Accused to appear when noticed." The next entry in the journal under date June 21, 1906, is: "Case sent to Government Agent."

It is to be observed that the Government Agent is the complainant in the case. No further steps in the matter were taken until January 10, 1911, when there is a note in the journal: "This case having been returned by the Government with the request to dispose of as usual, parties noticed for January 31, 1911."

After a series of adjournments there is a note in the journal under date September 18, 1912: "Accused present on summons; admits clearing." The case was finally heard on November 11, 1912, when the question of the title of the accused to the land was thoroughly investigated.

[1] *S. C. Min., July 29, 1910.*

The learned Police Magistrate in a very full and able judgment found that the sannas and another copper sannas produced by the accused were forgeries, and that a rock sannas which the copper sannases were alleged to confirm did not give the accused any title to the land, and, on the admission of the accused that he had cleared the land, he convicted him under the 1885 Ordinance and sentenced him to pay a fine of Rs. 25. Leave to appeal was given by the Magistrate.

The Ordinance of 1885 was repealed in 1897 by Ordinance No. 16 of 1897, which reproduce many of the provisions of the earlier Ordinance, and, by section 5 of Ordinance No. 21 of 1901, any offence under the repealed Ordinance and any action incompleted was not affected by the repeal.

On appeal it was argued that the long adjournments were unreasonable and irregular, and that the evidence showed that the accused dealt with the land under a *bona fide* belief that he was entitled to do so. It was further urged that the Criminal Procedure should not have been invoked to establish a claim to title which should have been reserved for a Civil Court.

Section 4 of Ordinance No. 10 of 1885 expressly provided that for the purpose of any prosecution under the Ordinance the Court should have jurisdiction to try and determine any question of title arising in the prosecution, and there is a proviso that the judgment should not be received as evidence of title or pleaded in bar in any civil suit. It would seem, therefore, that there was nothing to prevent the question of title being gone into.

Under section 9 of the Criminal Procedure Code the Police Court exercised summary jurisdiction. The accused appeared before the Court on a summons on May 28, 1906, and on being asked to show cause why he should not be convicted said that he claimed the land on a talipot, and the case was postponed to June 18 to enable him to produce it. On June 18 he produced the unregistered copper sannas, when a postponement was ordered without any date being fixed, and, apparently, to enable the complainant to examine the sannas. This was contrary to the procedure laid down in the Code. Section 188, relating to summary procedure, after providing that an accused who makes an unqualified admission of guilt may be convicted and sentenced, says that if no such statement is made, the Magistrate shall ask him if he is ready for trial, and if he answers in the affirmative, the Magistrate shall proceed to try the case ; but if the accused is not ready, the Magistrate may, subject to the provision of section 289, postpone the trial to a date to be then fixed. The section proceeds to say that this procedure shall not prevent a Magistrate from taking evidence and then postponing the case, " subject to the provisions of section 289, for reasons to be recorded by him in writing . . . . . for a day to be fixed by him." This section, by the reiteration of some of the provisions of section 289,

1912.

ENNIS J.

Government Agent, North-Central Province, v. Appuhamy

namely, that the postponement is to be for reasons recorded in writing and to a fixed date, seems to lay particular stress on these parts of sections 289. The section, moreover, seems to indicate that in a summary trial a postponement can be ordered only when the accused is not ready for trial.

Section 425 of the Criminal Procedure Code provides that on appeal the judgement shall not be altered on account of any error, omission, or irregularity in the proceedings unless a failure of justice has been occasioned thereby.

No objection appears to have been taken in the Police Court during the five and a half years over which the case extended to the procedure adopted, and the point has not been mentioned in the memorandum of appeal. It has been urged for the first time by counsel on the appeal. When the case was finally heard in the Police Court it was very completely gone into, and the facts were carefully and ably weighed by the learned Magistrate.

An unreported case (P. C. Anuradhapura, 27,957, S. C. 417), judgment of July 29, 1910, under the same Ordinance, in which there had been a delay of over two years, and in which there was an appeal on this among other grounds, has been cited by the Crown, where, on appeal, it was held that the delay was no bar to the prosecution, but in that case the delay was taken into account when deciding the appeal, which was allowed. In this case it appears to me I have to answer the question, Can a summary case be extended over five and a half years by irregular and unreasonable postponements without occasioning a failure of justice?

In my opinion the moment the length of an adjournment becomes, without question, unreasonable, as it undoubtedly was in this case, from that time there would be a failure of justice, for reasonable speed is essential in a summary trial. I am not prepared to say how long an adjournment may extend before it becomes unreasonable ; it would depend upon the circumstances of each case ; but in a summary trial an adjournment made without a strict observance of the provisions of the Code relating to adjournments in summary trials, without any record that the accused was not ready, extending to a period of five years, and then only closed at the instance of the complainant, cannot possibly be reasonable, and is such a wide departure from the procedure laid down for the guidance of the Courts in summary trials, that it is impossible to hold that it does not by itself occasion a failure of justice, notwithstanding that no earlier objection was taken to it.

While quashing the conviction, I am glad to add that the accused has, in all other respects, been fairly dealt with in this case, and that the delay has been occasioned through treating the case more as a civil dispute than a criminal prosecution.

Conviction quashed.